86-52 (1)

Supreme Court, U.S.
FILED
JUL 17 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1986

ARTHUR KUNGLE JR.

Petitioner

v.

ST. JOHN'S COLLEGE, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS OF MARYLAND

ARTHUR KUNGLE JR
P. O. Box 365
Annapolis, Maryland
21404
(301) 263-9080

52 pp

a. Questions Presented

1. Can a state's appellate procedure be hidden or compliance therewith impossible, and should a state's courts favor those with formal legal training?

85-2018, Kungle v. St. John's College et al, is another and related aspect of this controversy. This up-front statement is encouraged by the Clerk's Office and Stern & Gressman, Supreme Court Practice(1986) 352-353, and it is impelled by the interpretation of The United States LAW WEEK, 55 LW 3003 (7-1-86). 85-2018 is from No. 574, Oct. Term, 1985, Maryland Court of Appeals, this is from No. 648, Oct. Term., 1985, Maryland Court of Appeals.

b. List of Parties

The parties to the proceedings below were the Petitioner Arthur Kungle Jr, and the Respondents: St John's College, Edwin Delattre, Jerome Lapides, Samuel Kutler, Edward Sparrow, and Bryce Jacobsen; and they are also before this Court. 28 U.S.C. §2403(b) may be applicable and so this is also served upon the Attorney General of Maryland.

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Kemp-Pontiac v. S & M Const., 33 Md. App. 516 (1976) 7

Paper Stylists v. Fitchburg Paper, 9 F.R.D. 4 (1949) 9

Constitutional Provisions & Rules:

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Misc.:

5 Am. Jur. 2d, Appeal & Error §1023 7

20 Am. Jur. 2d, Costs §93 7

56 Am. Jur. 2d Motions, Rules & Orders §42 7

20 C. J. S. Costs §350 7

Butterworth's Costs (London, 1965) 8

Kittrie & Wedlock, The Tree of Liberty (1986) 6

P. & S. Sarkar, The Law of Civil Procedure, in India, Bangladesh & Pakistan, 5th ed., (Calcutta, 1972) 10

Stern & Gressman, Supreme Court Practice (1986) i

U. S. Law Week, 7-1-86(55 LW 3003) i, 6

F. Weiner, Briefing & Arguing Federal Appeals (1961) 3

The Petitioner respectfully requests allowance of the petition for writ of certiorari to review the judgment of the Court of Appeals of Maryland in this matter, entered on April 18, 1986.

d.Opinions Below

The judgment of the Court of Appeals of Maryland (in No. 648 , September Term, 1985) denying Petition for Writ of Certiorari is not yet reported (___Md.____(1986)) but is included in the Appendix. The judgment of the Court of Appeals of Maryland (in No. 330, September Term, 1985) is reported in 65 Md. App. 776 (1985), and the opinion which is not reported, is included in the Appendix.

e.Jurisdiction

The judment of the Maryland Court of Appeals denying petition for Writ was entered on April 18, 1986. According to their clerk, the Maryland Court of Special Appeals, on January 23, 1986, denied a

Motion to Retax Costs in their order accompanying their Mandate of December 30, 1985--which denied petitioner's Motion for Reconsideration, and ignored Motion to Exclude Unnecessary Printing as Costs.

This petition is docketed within 90 days required, and 28 U.S.C. 1257 is invoked. (No. 85-2018 was earlier and related petition in these matters with regard to more substantial dismissals and denials.)

f. Constitutions and Rules Involved

U. S. Const. Art. VI, Sec. 2, & 14th Amendment; Md. Const. Dec. of Rts. Art. 2 & 5; Fed. R. App. Proc. 39, Md Rules: 1028, 1031, 1035, 1076, 1081, 1082; India L. Civ. Proc. 35.*

*Texts are quoted in appendix.

g. Statement of the Case

Perfecting an appeal of Anne Arundel County Circuit Court's Dismissal of the Case Kungle v. St. John's et al, No. 3106024, and following Maryland Rules, agreement was unsuccessfully sought as to the record extract, Rule 1028. Difficulties reconciling Rules 1028 and 1031(a) hampered preparation of extract and brief. An appendix included relevant and meant to be helpful material (F.B.Wiener, Briefing & Arguing Federal Appeals(1961) 120-122), for the Court of Special Appeals. Suprisingly appellees included an appendix record of over 130 pages, about 100 duplicative of the appellant's extract, plus duplicative rules and crossed out annotations--without any "statement of reasons therefor" per Rule 1028(e)--and also their breif avoided all issues raised. Astoundingly the Court too evaded the issues and dismissed the appeal supposedly because of the brief with passing references to the extract (Opinion 4. 5. 7 & 8, Rule 1035(b-7).

Concerned about the costs appellant wrote the clerk requesting a statement and objecting to unncessary inclusion--after no response, by phone a motion was suggested. A motion to exclude unnecessary costs was included along with a motion for reconsideration. 12/30/85 the latter was denied, and the former ignored, the mandate issued, with incorrect statement of costs. The clerk was written concerning miscalculation, but did not answer. Partial payment was made. 1/14/86 appellant filed petition for writ in the Court of Appeals, for the stated dismissal and denial. Then a motion to retax costs was filed, and the Clerk of the Court of Special Appeals wrote swiftly that the motion was denied 1/23/86 "the mandate having already been issued." Full payment was forwarded, and another petition for writ was made, particular to these matters. That was denied and this follows.

h. How Federal Questions were Presented

Because Maryland offers little guidance for objection to costs or retaxation, pertinent principles were sought in the legal encyclopedias and followed--thus drawing on our shared traditions of common law and constitutions guaranteed us by Md. Const. Dec. of Rts. Art 5 and 2, U.S. Const. Art. VI, Sec. 2, and the 14th Amendment.

The exact questions presented below were:

> 1. What is a litigant who objects to assessment and taxation of court costs to do when the rules are silent and offer no guidance? 2. Are these questions, or previous letters to clerk or motions to the Court timely? 3. Are these questions worthy of your consideration especially now that comparisons and analysis can readily be made, and may this advance our law?

Reliance was on the relevant and inter-related ways of the states, the United States, Great Britain and India.

j. Reasons for Allowance of the Petition

A. THIS IS NECESSARY TO BRING ALL THE CONTROVERSY BEFORE THE COURT

This petition is impelled by the Maryland Court of Special Appeals dismissal under Maryland Rule 1035(b)(7), the Maryland Court of Appeals denial of petition, and U. S. Law Week's summarization that dismissal was "for failure of brief, appendix, and record extract to conform to appellate procedure requirements." In related petition No. 85-2018, petitioner dealt with substantial and fundamental questions about the content, 55 LW 3003.* This petition is based on a different procedural question about extracts and costs, but it may help show this Court that there have been very serious and substantial compliment with requirements.

*"..expulsion and exlusion of those proessing unorthodox belief persisted in the older colonies." Kittrie & Wedlock, The Tree of Liberty(1986) 13

B. IMPOSSIBLE PROCEDURE IS IMPROPER

Unnecessary and duplicative printing is not favored, Md Rules 1028(e & f), 1082(c). Material lacking to appellant below was supplied, no violation or evasion of rules was intended, and no critical portion omitted, satisfying Kemp-Pontiac v. S. & M. Constr, 33 Md. App. 516, 524-525(1976)(Contra: Opinion of Ct. of Sp. App. 4-5). A motion to retax costs is proper to correct erroneous assessment after addressing the clerk, and yet it is dificult to object to taxation until its annoucement, and a mandate may not be changed by a clerk. (5 Am. Jur. 2d, Appeal & Error §1023, 20 Am. Jur. 2d Costs §93, 56 Am. Jur. 2d Motions, Rules & Orders §42, 20 C.J.S. Costs §350(a&b)) Thus there were letters to the clerk and motions to the Court of Special Appeals, all seemingly ignored until finally denied.

Maryland's Court of Special Appeals said:

> ..the law is not easy to understand, nor is intricate procedure easily cognizable. (Opinion at 7)

Law should not be impossible to understand nor procedure so intricate as to be impossible to follow. Laws and procedure should not be secret or hidden, nor favor or excuse those specially legally trained: contrary to the situation in this case and controversy.

C. SIMILAR PROBLEMS EXIST IN THE STATES

As Justice Brandeis taught us, we can learn from other laboratories of liberty. Some jurisdictions are clear about how to make objections as to assessments or taxation of costs (Ariz., D.C. Fla., Ill, Mich., Minn., Va., F.R.A.P., Sup. Ct. Cost Rules, G. B., Butterworth's Costs, London, 1965)*. Some are ambiguous (Mo. & Wisc.). Others seem to be silent and without guidance (Cal., Ia., N. J., N.C., O., Ok., Pa., Tex.) like Mary-

* Noting particularly F.R.A.P. 39 in comparison with Maryland Rules 1081 & 1082.

land. Due to the recent publication by West of most state rules--encouraged by this petitioner after the Williamsburg meeting on Developments in State Constitutional Law, as was their fuller display in the Library of Congress--there will be more constructive comparison with each other and with the procedures of the federal union we share in common. More and better questions about all procedures will come before this Court. Unfair and improper procedures are violations of our consittutions and should not escape scrutiny, particularly with regard to the due process and equal protection clauses of the 14th Amendment.

D. IMPROPER DEFERENCE IS NOT DUE

Arbitrary and unappealable discretion is not sound discretion open to analysis.*

* Delno v. Market St. Ry. Co., 124 F.2d 965, 967 (1942), Paper Sylists v. Fitchburg Paper, 9 F.R.D. 4, 5 (1949), citing Lords Camden & Mansfield, Johnson v. United States 398 A.2d 354, 365(1979), citing Justices Franfurter & Cardozo.

This is especially true when important principles are at stake.*

* "Appeal on Question of Costs. An appeal is incompetent on the question of costs where no principle is involved or where the discretion has been properly exercised (n.b.: cites omitted). There should be interference when some injustice is involved to the party aggrieved.

An appeal lies for costs awarded when--(1) a matter of principles is involved; (2) the order proceeds upon a mispprehension of fact or law; (3) there has been no real exercise of discretion, or the order is erroneous in law and improper. The High Court will interfere when the discretion has been exercised arbitrarily and capriciously by disallowing all costs of the plaintiff without any reason. Second appeal lies when a question of law or principle is involved. Where the court forgets the question of costs and exercises no discretion, the appellate court will interfere.

If the order for costs is given in an 'appealable order' (as distinguished from a 'decree') appeal lies from that part of order which relates to costs but no second appeal lies from an order as to costs in an appealable order for no second appeal lies under s 104(2) from an order passed in appeal under s 104 (1). As no appeal lies from a non-appealable order it follows that there can be no appeal from a direction as to costs in such order.

If in the courts below wrong principles have been applied or there is some error of law in awarding costs, then the High Court can interfere in second appeal." Note on 35. Costs, P. & S. Sarkar, The Law of Civil Procedure, in India, Bamgladesh & pakistan, 5th ed., Calcutta, 1972.

Conclusion

Wherefore the Petitioner requests the Court to do whatever is right and proper.*

Respectfully submitted,

July 16, 1986

Arthur KungleJr
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(301) 263-9080
Pro se

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* Petitioner would seek appropriate counsel for argument if this petition is gratned in order to better respect the Court. Apology is made for the length of necessary citation.

Sec. 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land;and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendments:

(ARTICLE XIV.)

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Maryland Constitution - Declaration of Rights

Article 2.

The Constitution of the United State, and the Laws made, or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution of Law of this State to the contrary notwithstanding.

Article 5.

That the Inhabitants of Maryland

are entitled to the Common Law of England, and the trail by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to

them from, or under the Charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore.

Federal Rules of Appellate Procedure

Rule 39. Costs.

(d) Bill of Costs; Objections; Costs to be inserted in Mandate or Added Later.

A party who disires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment. Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court. The clerk shall preOpare and certify an itemized statement of costs taxed in the court of appeals for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the clerk of the court of appeals to the clerk of the district court.

Maryland Rules:

Appeals to Court of Special Appeals

Rule 1028. Printed Record Extract in Civil Cases (a.-h.)

a. Appellant to Print

In civil cases, unless a statement is filed pursuant to Rule 1029 b or unless otherwise ordered by this Court, the appellant shall cause to be printed, either as a separate volume or an an appendix to his brief, extracts of the record which shall include the parts thereof provided for by section by of this Rule arranged in the order in which the same appear in the record. The extracts from the record so printed shall be copied verbatim except as otherwise provided in section go of this Rule. Asterisks or other appropriate means shall be used to indicate omissions in the testimony or in exhibitis, reference to the pages of the record and transcript shall be made and the date of flining each paper printed shall be stated at the head of the copy. The table of contents, provided for in section c 1 & d 1 of Rule 1031 (Style and Contents of Brief) shall also cover the contents of an appendix bound with the brief and shall give reference to the initial page of the direct, cross, and redirect examination of each witness and of each pleading, exhibit, or other paper printed, and shall identify each such document by a descriptive phrase, and if an exhibit, also, its number. An appendix bound separately shall be prefaced with a table of its contents in like form. If the transcript of testimony is reproduced, the

pages shall be consecutively renumbered; any photograph, document or other paper filed as an exhibit which is to be included in the appendix or printed record extract shall be incdluded in all copies of the appendix or printed record extract, and may be either folded to the appropriate sixe, or photographically or mechanically reduced, so long as legibility is not impaired. The size, style, format and binding of the appendix or printed record extract shall be the same as those prescribed for a brief by section a of Rule 1031 (Style and Contents of Brief).

b. Contents

1. What to be Included.

The printed extract shall contain such parts of the record as may reasonably be necessary for the determination of the questions presented by the appeal, and shall include:

(a) The judgment appealed from, together with the opinion or charge of the lower court, if any.

(b) So much of the evidence, pleadings or other parts of the record as is material to any question the determination of which depends upon the sufficiency of the evidence, pleadings or other matter contained in the record to sustain any action, ruling, order or judgment of the lower court.

(c) Such other parts of the record as may be designated by the parties pursuant to section c. of this Rule.

2. What to Be Excluded.

The printed extract should not include those parts of the record which:

(a) Support facts set forth in an agreed statement of facts pursuant to section g. of this Rule or
(b) Are summarized ina stipulation pursuant to section g. of this Rule.

c. Designation by Parties/

1. Agreement Where Possible.

Whenever posible the parties shall by stiplulation agree on the partts of the record to be included in the printed extract.

2. Procedure Where Agreement Impossible.

If the parties are unable so to agree, then within ten days after the filing of the record in this Court the appellant shall deliver to the appellee a written statement of the parts of the record he proposes to include in the printed extract. Within ten days after the delivery of such statement by the appellant to the appellee, the appellee shall deliver to the appellant a written statement of any additional parts of the record thea appellee desires to be included in the printed extract. Within ten days after the delivery of the appellee's statement to the appellant, the appellant may deliver to the appellee a statement of any additional parts of the record he proposes to include in the printed extract in view of the parts of the record designated in the statement of the appellee.

d. When Appellant May Omit Part Designated

by Appellee.

Notwithstanding the provisions of section b. 1.(c) of this Rule, the appellant shall not be required to include in the printed extract any part of the record designated by the appellee pursuant to section c.2. of this Rule which the appellant does not deem material to the question presented, if within two days after demand therefor by the appellant the appellee has failed to secure the payment of the estimated cost of including in the printed extract the part of the record so designated by the appellee. If pursuant to this section the appellant omits from the printed extract any part of the record designated by the appellee, he shall include in the printed extrac t a statement of the reason for such omission.

e. When Appellee May Include Appendix In Brief.

If by reason of inadvertence, or failure of the appellee to secure the payment of the estimated cost of printing pursuant to section d. of this Rule, or for any other reason, the printed extract does not contain some part of the record which the appellee deems material and which he desires this Court to read, the appellee may print such parts of the record as an appendix to his brief together with a statement of the reasons therefor. Partie and counsel are cautioned that the cost of printing such appendix may be withheld or divided under section c. of Rule 1082 (Awarding of Costs).

f. When Appellant May Include Appendix in Reply Brief.

The appellant may include in any appendix to his reply such additional part of the record as he deems material and which he desires this Court to read in view of the matter contained in the appellee's brief or appendix. Such appendix to the appellant's reply brief shall be prefaced by a statement of the reasons therefor. Parties and counsel are cautioned that the cost of printing such appendix may be withheld or divided under section c. of Rule 1082 (Awarding of Costs).

g. Agreed Statement of Facts.

The parties may agree upon a statement of undisputed facts, which agreed statement may be included in the printed extract or, if the parties so agree, may be included as all or a part of the staement of facts in the appellant's brief. If facts are disputed or if the parties cannot agree upon a statement of undisputed facts the parties may, by stipulation, summarize the testimony of any witnesses or the contents of any exhibits and include such stipulation in the printed extract in lieu of the testimony and exhibits summarized therein. This section shall be so construed asto authorize but not require the parties, by agreement, to state all or part of the testimony in narrative form.

h. Thirty Copies to be filed.

If the record extract is printed as a separate volume, thirty copies thereof shall be filed with the clerk at the same time the appellant's brief is filed. It shall be printed in clear legible type and on good pagper, the pages to be 8½"x11".

i. Penalties--Correction.

1. Violation of Section a.

For violation of section a. of this Rule, this Court may dismiss the appeal, or make any other appropirate order with respect to the case, including an order that an improperly printed appendix or printed extract be reprinted at the expense of the counsel for the party whose appendix or printed extract was improperly printed.

2. Violation of Section b.

For violation of section b. of this Rule this court may require that additional portions of the record be printed or otherwise furnished, or it may dismiss the appeal, or make any other appropriate order with respect to the case.

3. Inadvertent Errors.

Inadvertent omissions or misstatements in the printed extract or in any appendix may be corrected by direction of this Court on application or of its own motion.

Rule 1031. Style And Contents of Brief.

a. Style.

a brief shall be printed as defined in this subtitle. Carbon copies of briefs shall not be submitted except by leave of this Court on good cause shown. A brief, whether produced by printing or reproduc-

ed by duplicating shall be on opaque, unglazed paper, the pages to be 8½"x11" in size, and type size shall not be smaller than 11 point or small pica. Margins shall be not less that 1½ inches on the left hand side of the page and one inch at the top, the bottom and on the right hand side. Pages shall be consecutively numbered and securely bound along the entire left margin. A typewritten brief shall be double spaced and typed on only one side of the page however, both sides of the pages may be used when double spaced typescript is reproduced by any dupplicating or copying process which produces a clear, legible black image on white paper. References to the record shall be indicated as (R..), to the transcript of testimony as contained in the record as (T..), to the printed extract, whether printed as a separate volume or as an appendix to appellant's brief, as (E..), to an appendix to appellee's brief, as (Apx..) The cover of an appellant's brief shall be yellow, and appellee's bref green, reply brief red and a brief of an amicus curiae gray.

Rule 1035. Dismissal of Appeal.

b. On Motion.

On motion filed by any party, an appeal may be dismissed for any one of the following reasons:

1. The appeal is not allowed by law or by Rule 1009(Order Denying Motin to Dismiss Not Appealable).
2. The appeal has not been properly taken pursuant to Rule 1011(How Appeal to be Taken).
3. The order for appeal has not be filed with the lower court within the time prescribed by Rule 1012(Appeal--Times for Filing).
4. The record has not been transmitted within the time prescribed by Rule 1025 (Record--Time for Transmitting).
5. The contents of the printed record extract do not comply with section b. of Rule 1028(Printed Record Extract in Civil Cases).
6. A brief ahs not been filed by the appellant within the time prescribed by Rule 1030(Filing of Briefs).
7. The style, contents, size, format, legibility or method of reproduction of a brief, appendix or printed record extract does not comply with Rule 1031(Style and Contents of Brief).
8. The case has become moot.

Rule 1076. Mandate.

c. To Contain Statement of Costs.

The mandate shall contain a statement of the costs taxable to the appellant and to the appellee and of the order of this Court awarding costs.

Rule 1081. Taxing of Costs.

a. What to Be Included.

In taxing the costs in a case the Clerk shall include the allowance determined pursuant to section b of this Rule for printing the briefs, the record extract, and any necessary appendices to briefs, the amount, if any, paid by the appellant for the original and the copies of the stenographic transcript of testimony furnished pursant to section a 2 of Rule 1026(Record on Appeal), and the cost of printing a motion to dismiss if the motion is granted.

b. Allowance for Printing.

The clerk shall determine the allowance for printing by multiplying the number of pages in the briefs, the reocrd extract, and any anexessary appednices bo briefs by the standard page rate established from time to time by the Court of Appeals.

c. What to Be Excluded.

If the record is printed without order of this Court the cost of printing shall not be taxed as costs except where for special cause shwn this Court shall otherwise order.....

Rule 1082. Awarding of Costs.

a. Generally.

In all cases in this Court the awarding of costs shall be in the discretion of this Court, but unless it is oterwise ordered by this Court costs shall be awarded against the losing party.

c. Unnecessary or Improper Printing.

When unnecessary matter has been included in a record extract or appendix or when a brief, appendix, or record extract has not been printed in accordance with section a of Rule 1031(Style and Contents of Brief), the costs of printing may be withheld or dividied as this Court may direct.

(Rule of Civil Procedure - India)

35. Costs.--(1)

Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.
P.&S. Sarkar, The Law of Civil Procedure, in INdia, Bangladesh & Pakistan (Calcutta, 1972)

UNREPORTED
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 330

September Term, 1985

ARTHUR KUNGLE, JR.

V.

ST. JOHN'S COLLEGE, ET AL.

Moylan
Garrity
Bell, Rosalyn B.

PER CURIAM

FILED: November 26, 1985

Arthur Kungle, Jr., initiated an action in the Circuit Court of Anne Arundel County against St. John's College and several of its officers and trustees. Kungle filed four sets of pleadings with the court below: a "Complaint and Demand for Jury Trial," and "Amendment of Bill of Complaint," and "Amended Complaint According to Pre Trial Conference: and a "Revised Complaint." In addition, he filed an "Amendment of Caption," and "Amendment of Complaint or Pleadings to Show Correspondence" with twenty-eight attachments, a "Correction of Amendment of Complaint or Pleadings to Show Correspondence Which was Presented at Hearing on Motions," a "Supplement to Revised Complaint," and a "Supplement

to Correspondence Appended at Hearing."

On three separate occasions St. John's moved to strike Kungle's pleadings, submitting that his pleadings were unintelligible and not in compliance with the Maryland Rules. After Kungle's fourth attempt to amend, the court struck his last pleading and dismissed the complaint with prejudice. The court noted:

> "THE COURT: That not for one moment do I doubt the seriousness of the Plaintiff Arthur Kungle in this matter. And I don't doubt that he has been diligent and worked hard to try and perfect a claim against Saint [sic] John's College and other defendants named in his pleadings. As I pointed out at the last hearing, the law is complicated. It's not easy. One cannot always sit down and draft a proper pleading,

[1/2]

nor can one always draw articles of incorporation or other legal documents unless one has some training or is awful lucky and skillful to [sic] -- both together, being skillful is the ability to research and lucky that you've done it right. In this case, there have been a number of pleadings that have been filed. And the last time you came it, I gave the Plaintiff the right to within thirty days to file an amended bill in this case with an intelligible one which could be responded to, and one that could bring the case into a posture where the defendants could answer and put the case at issue. I am never one to throw out cases on minor defects. And if you're talking margins don't meet the requirement, if the paper's a quarter of an inch shorter, that's never going to be grounds to throw out a case. The idea being that litigants should get their day in court. They should have a right to come in and have their complaint heard. Now at the last time, I suggested to the Plaintiff that he ought to [get] legal assistance, that the matters from I tried to glean from his argument that he wished

> to raise were not properly raised. They were in a position or placed there on paper in a manner that on one could really understand them. And since then, he has filed an amended or revised complaint. That I as well as my staff have gone over this and I can't get heads nor tails out of it, much like the defendants in this case. That I can't determine the exact nature of his complaint, what relief he says he's entitled to. It reads with a lot of citations and quotes, but the bottom line, what is this case about, and I cannot determine."

[2/3]

Mr. Kungle moved to alter or amend the judgment. The court stuck the motion and declared its original order in full force and effect.

Mr. Kungle seeks here to appeal the denial of his motion. In response, St. John's College has presented us with two motions to dismiss Mr. Kungle's appeal.

Normally at this juncture we would set our a brief exposition of the issues and facts surrounding the controversy. We are incapable of doing so here. We have considered the briefs, appellant's record extract, appellant's reply brief and the complete record itself. We are unable to answer the seven questions raised by appellant primarily because we are unable to distill the issues presented. Of even more immediacy, we are unable to provide the reader with a statement of the facts in this case. We are baffled about what did transpire between appellant and the college, and it is not our function to speculate on the validity of appellant's contentions. We are regrettably left with no alternative

but to dismiss this appeal.

Appellees first move to dismiss this appeal pursuant to Rules 1031(a) and (c) and 1035(b)(7). Rule 1031.a sets out the required style of an appellate brief, with reference to the bond of paper, width of margins, typespace, and color of the cover. Subsection (c) of the rule, in part, provides:

"Contents of Appellant's Brief.

* * * * * * * * *

" 2. Statement of the Case - Questions Presented.

"...The statement of the questions presented shall indicate the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail."

* * * * * * * * *

"4. Statement of Facts.

A clear and concise statement of the facts material to a determination of the questions presented ...."

"5. Argument.

Argument in support of the position of the appellant."

Rule 1035(b)(7) allows for dismissal of an appeal if the style, contents, size, format, legibility or method of reproduction of a brief, appendix or printed record extract does not comply with Rule 1031.

As we stated in Kemp-Pontiac-Cadillac v. S & M Constr., 33 Md. App. 516 (1976):[4/5]

> "These rules are to promote the orderly and effective administration of justice. They are to be read and carefully followed by [litigants]. Whether to dismiss the appeal or not in the event of violation of the above rules, rests in the discretion of this Court."

Id. at 521.

Appellees contend that appellant's brief is replete with style violations of Rule 1031(a) including illegible duplications and merger of the statement of facts with the argument. They further maintain that the "disjointed, scatter-shot nature of Kungle's argument, assertions and prose makes Kungle's brief virtually incomprehensible" under subsection (c).

While we might be inclined to bend this Court's procedural rules to accomodate a litigant representing himself, we cannot condone the manner in which appellant has subverted our procedure in the presentation of this case. Appellant has supplied us with incomprehensible, disorganized briefs

and record extract. His submission is inundated with violations of the mandatory rules of appellate procedure. It is not our function to search through the record to extrapolate the true nature of the issues. Harman v. Harman, 61 Md. App. 554, 558 (1985). Nor are we empowered to determine the facts or arguments outside the confines of the case. [5/6]

By way of example, the following excerpt was extracted from appellant's brief wherein he attempts to explain reference to international documents in his pleadings.

> "The reason for arguing international agreements, as we said or attemped to be said, in the 2nd (XII) & 3rd (XI) complaint and attempt to satisfy the good judges, was primarily "to inform and

infuse our domestic documents where they are lacking. (And perhaps Conway v. Social Services Admin 298 Md. 639, 650, agrees with Maryland's Declaration of Rights. See also, Paust, Human Dignity as a Constitutional Right, 27 Howard 145.) In the last complaint, references to the American Declaration of the Rights and Duties of Man, Art 26, was to a principle, which as Kilty was afraid, some have forgotten: presumption of innocence. Reference to 11.a.VII of the Helsinki Accord, on freedom of association, expression and conscience, repeats properly what we should have grown to. In 1776 Maryland's original draft of freedom of religion clause, was one for freedom of conscience. And even earlier Lord Mansfield, who opposed the American Revolution, is reported to have said "Conscience, my lords, is not controllable by human laws, nor amenable to human tribunals, persecution, or attempts to force concience, (sic) will never produce conviction, and can only be calculated to make hypocrites or martyrs." (American's friend) Lord Camden was said to rejoice to hear such noble sentiments.

(From a colleague he did not expect it from.)"

The attached appended page* [6/7] was duplicated from the appendix attached to appellant's reply brief. He provides us with no introduction or explanation to it.

It is unfortunate for appellant that we are unable to decipher these paragraphs or the balance of his argument. There is no question in our minds that appellant has made serious and substantial attempts to conform with the procedural rules at the trial land appellate levels. It is clear form the 25 page brief with 12 page appendix, the 16 page reply brief with 11 page appendix, the 240 page record extract, the 59 case

* Omitted because not relevant to this particular petition. Dealt with in No. 85-2018.

citations, the 52 references to authoritative works including citations to "Ly Raym" and Cokes Reports," the references to the Maryland Rules, the federal and state constitutions, the federal rules, the Magna Carta, and various international documents, that appellant has spent uncountable hours in preparation of this case. Nevertheless, the law is not easy to understand, not is intricate procedure easily congnizable.

We do not dismiss appellant's efforts lightly. We understand that appellant is agrieved because he was excluded from the grounds of the school. We cannot discern from the brief, the extract or the record the relief he seeks or the basis upon

which he claims the court could grant any relief. So far as we can determine should we entertain appellant's assertions and reinstate his complaint, appellees and the court will be not more enlightened than before. Appellant was given numerous chances below to rectify his pleadings and failed each time. Our consideration of the procedural history of this case convinces us that appellant would not, if given another chance, be capable of submitting legally adequate pleadings. Regretfully, we dismiss this appeal pursuant to Md. Rules 1031(a)(c) and 1035(b)(7).[1]

APPEAL DISMISSED. COST TO BE PAID BY APPELLANT.

[1] Because of our ruling, we do not consider appellees' second motion to dismiss or the merits of this controversy.

MANDATE

COURT OF SPECIAL APPEALS

OF MARYLAND

Arthur Kungle Jr.

v.

St. John's College et al

No. 330, September Term, 1985

November 26, 1985: Per Curiam filed. Appeal dismissed. Costs to be paid by appellant. December 23, 1985: Motion for Reconsideration filed by appellant. December 30, 1985: Motion for Reconsideration denied.

December 30, 1985: Mandate issued.

Statement of Costs:

IN Circuit Court: for Anne Arundel County:

Record:	$40.00
Stenographers Costs	$182.50

IN Court of Special Appeals:

Filing Record on Appeal	$
Printing Brief for Appellant	$192.00
Reply Brief	$148.80
Portion of Record Extract-Appellant	$590.40
Printing Brief for Appellee	$148.80
Portion of Record Extract-Appellee	$652.80

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals

In tstimony whereof, I have hereunto set my hand as Clerk and affixed the seal of Court of Special Appeals, this thirtieth day of December A.D. 1985

Howard E. Friedman
Clerk of the Court of Special Appeals
of Maryland

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

Court of Special Appeals

of Maryland

Annapolis, Md. 21401-1698

January 24, 1986

Mr Arthur Kungle Jr

P. O. Box 365

Annapolis, Maryland 21404

Re: Arthur Kungle Jr vs. St John's College et al, No. 330 Septe.ber Term, 1985

Dear Mr Kungle:

Your Motion to Retax Costs was denied by Order of this Court dated January 23, 1986, the mandate already been issued.

Yours very truly,

HOWARD E. Friedman

Clerk

In the

Court of Appeals

of Maryland

(Entered on April 18, 1986)

ARTHUR KUNGLE, JR.

v.

ST. JOHN'S COLLEGE et al.

Petition Docket No. 648

September Term, 1985

(No. 330, September Term, 1985

Court of Special Appeals)

ORDER

Upon consideration of the

petition for a writ of certiorari to

the Court of Special Appeals in the above entitled case, and the answer filed thereto, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

s/s Robert C. Murphy
Chief Judge

Date: April 18, 1986